

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Emily Claire Hari, *f/k/a Michael Hari*,

File No. 20-cv-1455 (ECT/TNL)

Plaintiff,

v.

ORDER

Joel Smith, *Special Agent*, et al.,

Defendants.

Magistrate Judge Tony N. Leung issued a Report and Recommendation on January 31, 2022. ECF No. 194. No party has objected to that Report and Recommendation, and it is therefore reviewed for clear error. *See* Fed. R. Civ. P. 72(b); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam). Finding no clear error, and based on all the files, records, and proceedings in this case, **IT IS ORDERED THAT** the Report and Recommendation [ECF No. 194] is **ACCEPTED** as follows:

1. The Sherburne County Defendants' Motion to Dismiss [ECF No. 40] is **DENIED as moot**.

2. Hari's Motion to Dismiss or Otherwise Eliminate Rasmussen Claims from this Cause [ECF No. 78] is construed as a notice of voluntary dismissal under Fed. R. Civ. P. 41(a)(1). All claims against Defendants Joel Smith, James Stuart, Sheila Larson, and Jesse Rasmussen are **DISMISSED** without prejudice.

3. The Anoka County Defendants' Motion to Dismiss [ECF No. 59] is **DENIED as moot**.

4. Defendant Beth Visel's Motion to Dismiss the Amended Complaint [ECF No. 99] is **GRANTED**. All claims against Visel are **DISMISSED** without prejudice for lack of personal jurisdiction.

5. The Federal Defendants' Motion to Dismiss [ECF No. 90] is **GRANTED** as follows:

- a. All claims against Defendant Nathaniel D. Gena are **DISMISSED** without prejudice for lack of personal jurisdiction.
- b. Hari's claims against Defendants Ryan Westby, Barbara Robbins, Joel Smith, Katherine Arden, Brenda Kane, Scott Hull, Matthew Aken, Thomas Huse, Carroll Nikki, and unnamed federal Defendants are **DISMISSED** without prejudice.

6. The Sherburne County Defendants' Motion to Dismiss [ECF No. 65] is **GRANTED in part** and **DENIED in part** as follows:

- a. Hari's official-capacity claims against Defendants Sheriff Joe Brott, Zach Beaumaster, Rachel Clem, Michael Sieg, Officer Thiel, and unnamed Sherburne County Defendants are **DISMISSED** without prejudice for failure to state a claim.
- b. Hari's individual-capacity claims against Defendants Brott and Sieg are **DISMISSED** without prejudice for failure to state a claim.
- c. Hari's Fourth Amendment and Sixth Amendment claims are **DISMISSED** without prejudice for failure to state a claim.

- d. Hari's First Amendment individual-capacity claims are **DISMISSED** without prejudice for failure to state a claim insofar as they rest on allegations related to unauthorized flash drive access, an unidentified individual reading a letter Hari was drafting on a computer, file deletion or alteration, and unauthorized access of mail sent to or received from courts.
- e. The motion is **DENIED** as to Hari's First Amendment individual-capacity claims against Defendants Beaumaster, Clem, and Thiel for reading Hari's privileged legal correspondence.

7. Hari's Motion for Leave to Amend Civil Rights Complaint and Memorandum in Support [ECF No. 137] is **GRANTED in part** and **DENIED in part** as follows:

- a. On or before **March 30, 2022**, Hari may file a second amended complaint¹ that (i) strikes her claims for compensatory damages; (ii) strikes claims and factual allegations against Defendants Smith, Stuart, Larson, and Rasmussen; (iii) adds factual allegations related to First Amendment claims against Defendants Beaumaster, Clem, and Thiel; and (iv) adds a Fourth Amendment official-capacity claim

¹ This order does not adjudicate Hari's recent motion for leave to amend or the propriety of amendments in her proposed second amended complaint, which Hari claims are "consistent with" Magistrate Judge Leung's recommendations and also seek to revive her now-dismissed wiretapping claims. ECF No. 214 at 1; *see* ECF No. 214-1.

against Sherburne County for its employees' recording of Hari's telephone calls with attorneys.

- b. The motion is **DENIED** in all other respects.

Dated: March 2, 2022

s/ Eric C. Tostrud

Eric C. Tostrud

United States District Court